UNITED NATIONS

GENERAL ASSEMBLY

Distr:
GENERAL

A/CONF.152/10
12 April 1991

Original: ENGLISH

UNITED NATIONS CONFERENCE ON THE
LIABILITY OF OPERATORS OF TRANSPORT
TERMINALS IN INTERNATIONAL TRADE
Vienna, 2-19 April 1991

REPORT OF THE SECOND COMMITTEE

I. INTRODUCTION

A. Submission of the report

1. The Conference at its third plenary meeting entrusted the Second Committee with the consideration of articles 17 to 19, and 21 to 25, of the draft Convention on the Liability of Operators of Transport Terminals in International Trade (A/CONF.152/5).

2. The present document contains the report of the Second Committee to the Conference on its consideration of the draft articles referred to it, and of other proposals made to the Second Committee during its deliberations.

B. Election of officers

3. At its fourth plenary meeting on 5 April 1991, the Conference unanimously elected Ms. Jelena Vilus (Yugoslavia) as Chairman of the Second Committee. On 10 April 1991, at the second meeting of the Second Committee, Mr. Ken Fujishita (Japan) was elected Vice-President, and Ms. Sylvia Strolz (Austria) was elected Rapporteur, of the Second Committee.

C. Meetings, organization of work and structure of this report

(i) Meetings

4. The Second Committee held 4 meetings, on 8, 10, 12 and 15 April 1991.

V.91-35524 8151T

(ii) Organization of work

5. At its first meeting on 8 April 1991, the Second Committee adopted as its agenda the provisional agenda contained in A/CONF.152/C.2/L.1.

6. The Second Committee proceeded by way of an article-by-article discussion of the draft articles before it and of the amendments to those draft articles submitted by representatives during the Conference. After initial consideration of an article and amendments by the Second Committee, and subject to the decisions taken on those amendments, the article was referred to the Drafting Committee. After consideration of the report of the Drafting Committee to the Second Committee on the articles referred to the Drafting Committee, the Second Committee referred to the Plenary the articles considered by it.

(iii) Plan of this report

7. This report describes the work of the Second Committee relating to each article before it, in accordance with the following scheme:

(a) Text of the draft article as prepared by the United Nations Commission on International Trade Law (UNCITRAL);

(b) Texts of amendments, if any, with a brief description of the manner in which they were dealt with;

(c) Proceedings of the Second Committee, subdivided as follows:

(i) Meetings,
(ii) Consideration of the article.

II. CONSIDERATION BY THE SECOND COMMITTEE OF THE DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

Article 17

A. UNCITRAL text

8. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 17

"Depositary

"The Secretary-General of the United Nations is the depositary of this Convention."

B. Amendments

9. No amendments were submitted to article 17.

C. Proceedings in the Second Committee

(i) Meetings

10. The Second Committee considered article 17 at its first meeting on 8 April 1991.

(ii) Consideration

11. The UNCITRAL text for article 17 was adopted and referred to the Drafting Committee.

Article 18

A. UNCITRAL text

12. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 18

"Signature, ratification, acceptance, approval, accession

"(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on ... and will remain open for signature by all States at the Headquarters of the United Nations, New York, until ... .

"(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

"(3) This Convention is open to accession by all States which are not signatory States as from the date it is open for signature.

"(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations."

B. Amendments

13. No amendments were submitted to article 18.

C. Proceedings in the Second Committee

(i) Meetings

14. The Second Committee considered article 18 at its first meeting on 8 April 1991.

(ii) Consideration

Paragraph (1)

15. The United States made an oral proposal that paragraph (1) provide that the Convention remain open until 30 April 1992. That proposal was adopted by 14 votes in favour and none against. The UNCITRAL text for paragraph (1) was adopted and referred to the Drafting Committee.

Paragraphs (2) to (4)

16. The UNCITRAL texts for paragraphs (2) to (4) were adopted and referred to the Drafting Committee.

Article 19

A. UNCITRAL TEXT

17. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 19

"Application to territorial units

"(1) If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may at any time substitute another declaration for its earlier declaration.

"(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

"(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a State Party, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a State Party, unless it is in a territorial unit to which the Convention extends.

"(4) If a State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State."

B. Amendments

18. An amendment was submitted to article 19 by Canada (A/CONF.152/C.2/L.7).

19. The amendment was to the following effect:

Paragraph (3)

Canada (A/CONF.152/C.2/L.7):
Amend paragraph (3) to read as follows:

"(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a State Party, this Convention shall be applicable only if

(a) the transport-related services are performed by an operator whose place of business is located in a territorial unit to which the Convention extends, or

(b) if the transport-related services are performed in such a territorial unit, or

(c) according to the rules of private international law, the transport-related services are governed by the law in force in a territorial unit to which the Convention extends."

[Adopted: see Consideration, 22, below.]

C. Proceedings in the Second Committee

(i) Meetings

20. The Second Committee considered article 19 at its second meeting on 10 April 1991.

(ii) Consideration

Paragraph (1) and (2)

21. The UNCITRAL texts for paragraphs (1) and (2) were adopted and referred to the Drafting Committee.

Paragraph (3)

22. The amendment proposed by Canada (A/CONF.152/C.2/L.7) was adopted by a vote of nine votes in favour, one vote against, and three abstentions. The UNCITRAL text for paragraph (3), as amended by the Second Committee, was adopted and referred to the Drafting Committee. Since the purpose of the amendment to paragraph (3) had been to align it with article 2 of the UNCITRAL text, the Drafting Committee was requested to align paragraph (3) with article 2 as adopted by the First Committee.

Paragraph (4)

23. The UNCITRAL text for paragraph (4) was adopted and referred to the Drafting Committee.

Article 21

A. UNCITRAL Text

24. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 21

"Effect of declaration

"(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

"(2) Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

"(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

"(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary."

B. Amendments

25. Amendments were submitted to article 21 by Japan (A/CONF.152/C.2/L.6) and Philippines (A/CONF.152/L.8)

26. Those amendments were to the following effect:

Article 21 in its entirety

Philippines (A/CONF.152/C.2/L.8):
Delete article 21.

[Withdrawn: see Consideration, 28, below.]

Paragraphs (1) and (4)

Japan (A/CONF.152/C.2/L.6):
Replace the words "made under this Convention" by the words "made under article 19".

[Adopted: see Consideration, 29, below].

C. Proceedings in the Second Committee

(i) Meetings

27. The Second Committee considered article 21 at its second meeting on 10 April 1991.

(ii) Consideration

Article 21 in its entirety

28. The proposal by the Philippines to delete article 21 (A/CONF.152/C.2/L.8) was withdrawn. The Drafting Committee was requested to consider inverting the order of articles 20 and 21, so that the provisions on the effect of declaration would appear immediately following article 19.

Paragraphs (1) and (4)

29. The amendment by Japan was adopted by a vote of nine votes in favour and five votes against. The UNCITRAL texts for those paragraphs, as amended by the Second Committee, were adopted and referred to the Drafting Committee.

Paragraphs (2) and (3)

30. The UNCITRAL texts for paragraphs (2) and (3) were adopted and referred to the Drafting Committee.

Article 22

A. UNCITRAL Text

31. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 22

"Entry into force

"(1) This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession.

"(2) For each State which becomes a Contracting State to this Convention after the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the date of the deposit of the appropriate instrument on behalf of that State.

"(3) Each State Party shall apply the provisions of this Convention to transport-related services with respect to goods taken in charge by the operator on or after the date of the entry into force of this Convention in respect of that State."

B. Amendments

32. Amendments were submitted to article 1 by Germany (A/CONF.152/C.2/L.4), and Netherlands (A/CONF.152/C.2/L.5).

33. Those amendments were to the following effect:

Paragraph (1)

Germany (A/CONF.152/C.2/L.4) and Netherlands (A/CONF.152/C.2/L.5): In Article 22, paragraph (i), the word "fifth" should be replaced by the word "fifteenth".

[Rejected: see Consideration, 35, below]

C. Proceedings in the Second Committee

(i) Meetings

34. The Second Committee considered article 22 at its first meeting on 8 April 1991.

(ii) Consideration

Paragraph (1)

35. The amendment by Germany (A/CONF.152/C.2/L.4) and Netherlands (A/CONF.152/C.2/L.5) was rejected by a vote of 5 votes in favour and 8 votes against. The UNCITRAL text for paragraph (1) was adopted and referred to the Drafting Committee.

Paragraphs (2) and (3)

36. The UNCITRAL texts for paragraphs (2) and (3) were adopted and referred to the Drafting Committee.

Article 23

A. UNCITRAL Text

37. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 23

"Revision and amendment

"(1) At the request of not less than one third of the States Parties to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

"(2) Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended."

B. Amendments

38. No amendments were submitted to article 23.

C. Proceedings in the Second Committee

(i) Meetings

39. The Second Committee considered article 23 at its first meeting on 8 April 1991.

(ii) Consideration

40. The UNCITRAL text for article 23 was adopted and referred to the Drafting Committee.

Article 24

A. UNCITRAL Text

41. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 24

"Revision of limitation amounts

"(1) At the request of at least one quarter of the States Parties, the depositary shall convene a meeting of a Committee composed of a representative from each Contracting State to consider increasing or decreasing the amounts in article 6.

"(2) If this Convention enters into force more than five years after it was opened for signature, the depositary shall convene a meeting of the Committee within the first year after it enters into force.

"(3) The meeting of the Committee shall take place on the occasion and at the location of the next session of the United Nations Commission on International Trade Law.

"(4) In determining whether the limits should be amended, and if so, by what amount, the following criteria, determined on an international basis, and any other criteria considered to be relevant, shall be taken into consideration:

(a) The amount by which the limits of liability in any transport-related convention have been amended;

(b) The value of goods handled by operators;

(c) The cost of transport-related services;

d) Insurance rates, including for cargo insurance, liability insurance for operators and insurance covering job-related injuries to workmen;

(e) The average level of damages awarded against operators for loss of or damage to goods or delay in handing over goods; and

(f) The costs of electricity, fuel and other utilities.

"(5) Amendments shall be adopted by the Committee by a two-thirds majority of its members present and voting.

"(6) No amendment of the limits of liability under this article may be considered less than five years from the date on which this Convention was opened for signature.

"(7) Any amendment adopted in accordance with paragraph (5) shall be notified by the depositary to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of 18 months after it has been notified, unless within that period not less than one

third of the States that were States Parties at the time of the adoption of the amendment by the Committee have communicated to the depositary that they do not accept the amendment. An amendment deemed to have been accepted in accordance with this paragraph shall enter into force for all States Parties 18 months after its acceptance.

"(8) A State Party which has not accepted an amendment shall nevertheless be bound by it, unless such State denounces the present Convention at least one month before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

"(9) When an amendment has been adopted in accordance with paragraph (5) but the 18-month period for its acceptance has not yet expired, a State which becomes a State Party to this Convention during that period shall be bound by the amendment if it enters into force. A State which becomes a State Party after that period shall be bound by any amendment which has been accepted in accordance with paragraph (7).

"(10) The applicable limit of liability shall be that which, in accordance with the preceding paragraphs, is in effect on the date of the occurrence which caused the loss, damage or delay."

B. Amendments

42. No amendments were submitted to article 24.

C. Proceedings in the Second Committee

(i) Meetings

43. The Second Committee considered article 24 at its first meeting on 8 April 1991.

(ii) Consideration

Paragraph (1)

44. The UNCITRAL text for paragraph (1) was adopted and referred to the Drafting Committee.

Subparagraph (2)

45. The United Kingdom of Great Britain and Northern Ireland made an oral proposal to delete subparagraph (2). That proposal was withdrawn and the UNCITRAL text for paragraph (2) was adopted and referred to the Drafting Committee.

Subparagraph (3) to (6)

46. The UNCITRAL texts for paragraphs (3) to (6) were adopted and referred to the Drafting Committee.

Paragraph (7)

47. The Islamic Republic of Iran made a proposal for the addition, at the end of paragraph (7), of a sentence to the effect that the Secretary-General as depository would notify Contracting States of the entry into force of an amendment under article 24. That proposal was withdrawn and the UNCITRAL text for paragraph (7) was adopted and referred to the Drafting Committee.

Paragraphs (8) to (10)

48. The UNCITRAL texts for paragraphs (8) to (10) were adopted and referred to the Drafting Committee.

Article 25

A. UNCITRAL Text

49. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 25

"Denunciation

"(1) A State Party may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

"(2) The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary."

B. Amendments

50. No amendments were submitted to article 25.

C. Proceedings in the Second Committee

(i) Meetings

51. The Second Committee considered article 25 at its first meeting on 8 April 1991.

(ii) Consideration

52. The UNCITRAL text for article 25 was adopted and referred to the Drafting Committee.

Final, Formal Clauses of the Convention

A. UNCITRAL Text

53. The text of the United Nations Commission on International Trade Law provided as follows:

"DONE at ..., this ... day of ... one thousand nine hundred and ..., in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention."

B. Amendments

54. No amendments were submitted concerning the final, formal clauses of the Convention.

C. Proceedings in the Second Committee

(i) Meetings

55. The Second Committee considered the final, formal clauses of the Convention at its second meeting on 10 April 1991.

(ii) Consideration

56. The Committee decided to indicate the date and place of adoption of the Convention.